IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 3606 OF 2003

Mrs. Manorama Gopal Landge,
Occupation Household,
Residing at Manorama Niwas,
Raghuvir Nagar, Shrikhandewade,
Dombivali (East), Dist. Thane. ..Petitioner
Orig. Plaintiff.

Vs.

Somnath Dagdue Rane,
Residing at Manorama Niwas,
Raghuvir Nagar, Shrikhande Wadi,
Dombivali (E), Dist. Thane. ..Respondent
Orig.Defendant.

Mrs. Gauri Godse for the petitioner.
Mr. M.S. Lagu for the respondent.

CORAM : ANOOP V.MOHTA J.
DATE : 12TH AUGUST, 2005.

ORAL JUDGMENT

. The petitioner landlady has invoked Article 227 of the Constitution of India and sought to challenge judgment and order dated 31/6/2002, passed by the Additional District Judge, Kalyan, (Appellate Court), whereby judgment and decree passed by the Jt. Civil Judge, J.D. Kalyan (trial Court), dated 7/12/1998 was set aside. Resultantly, the petitioner-landlady's suit stood dismissed on the ground of acquisition of alternative suitable accommodation for residence as contemplated under the Bombay Rent, Hotel and Lodging

House Rates Control Act, 1947 (for short Bombay Rent Act). Therefore, the writ petition.

2. The suit premises are consist of kitchen and one room on the ground floor of Manorama Niwas Raghuvir Nagar, Dombivali (E), District Thane. The monthly tenancy was at the rate of Rs. 75/- exclusive of Municipal Taxes and permitted increases. Some time in the year 1993, the respondent-tenant has acquired residential flat admeasuring 504 sq. feet, bearing NO.8, on the first floor of the building known as "Laxmi Darshan" opposite Akshay Hosital, near shrikhande Wadi, Dombivali (East), District Thane. The said flat admittedly, is in the name of wife of the tenant, Somnath. By notice dated, 4/9/1995, as the respondent let out the said flat to one Shri L.D. Sarkar on monthly rental basis demanded the premises. The petitioner replied but did not hand over the premises. Petitioner-landlady therefore, filed a suit in the trial Court, on a foundation of the acquisition of the alternative accommodation by the respondent in the name of his wife Smt. Alka Somnath Rane. The suit was filed on 13th November, 1995. By the written statement, dated 7/10/1996, the respondent-tenant resisted the same.

3. The parties led their evidence. Respondent did not step in the witness box. On behalf of the respondent, his wife Smt. Alka led evidence. Petitioner's husband being Constituted Power of Attorney, supported the case. The trial Court, after considering the material placed on the record, by the order dated 7th December, 1998, decreed the suit. The appeal preferred therefore, allowed by the appellate Court and set aside the trial Court's judgment and decree.

4. Heard the learned Counsel, Ms. Gauri Godse, appearing for the petitioner and Mr. M.S. Lagu, appearing for the respondent. There is no doubt in the present case, even as per the allegations of the landlord that the respondent tenant has acquired the flat in the name of his wife. There is a sufficient material on the record to justify the ownership of the premises in the name of his wife Smt. Alka Rane, since 1993. As already referred above, the suit was filed on 13/11/1995. The acquired premises in question has been admittedly let out to one Mr. L.D. Sarkar by the petitioner or his wife.

5. There is nothing on the record to justify, and prove that the said property has been purchased by the respondent-tenant from his own funds. There is a material on the record to justify that the said property has been gifted by the father-in-law of the petitioner-tenant to his daughter. The property is admittedly in the name of the wife of the tenant. The question is whether the acquisition of the premises in question that itself is sufficient to grant a decree for possession of the premises to the petitioner-landlady, aged 75 years. As noted already, the respondent defendant did not depose in support of his averments and the twin test that it was not his acquisition and secondly, even if it was, it could not be said to be the "suitable residence" as contemplated under the Act. Petitioner lead the evidence through his wife only.

6. The learned Counsel. appearing for the petitioner has relied on A.I.R. 1987 S.C. 2016 (Ganpat Ram Sharma and others V. Smt. Gayatri Devi); (B.R.Mehta V. Atma Devi), AIR 1987 (4) SC 1837; 1988 (2) All India Rent Control Act, 573 (Hamukhlal Raichand Shah V. Arvindbhai Mohanlal Kapadia) (Gujrat); 1990

Mah. R.C.J. 722 (Purshottam Sonu Bahalkar and other V. Dattatraya Dagdu Dobhade).

7. The learned Counsel appearing for the respondent relied on AIR 2000 S.C. 1386 (Anandi D. Jadhav V.Nirmala Ramchandra Kore and others), AIR 2003 S.C. 4015 (Abdul Sattar V. Kutejabi and others), 2004(1) All MR. 12 (Nibilal Fakrihamad Shaikh V. Shankarrao Channavirappa Kigani).

8. The learned Counsel appearing for the respondent in support of the order basically, has contended that the acquisition of the flat owned by the wife of the respondent, that itself cannot be treated as the acquisition of flat or premises by the respondent-tenant.

The Apex court in (B.R. Mehta V. Atma Devi), 1987 (4) SCC 183 has observed as under;

> "Therefore it is difficult to lay down a general proposition of each and every case, acquisition by the wife or the husband or either of the spouse , itself is sufficient to consider the case of the landlord".

Therefore, it is always question of facts and

circumstances which required to be considered while granting a decree to the landlord on this foundation.

9. If a case is made out by either of the spouses as a tenant that the relationship between such husband-tenant and or wife- tenant. is not good or it is strained and there is a possibility of matrimonial dispute or such legal issue, then in such situation and circumstances, even if there is a acquisition of flat or premises by either spouse, that itself will not be sufficient to grant the decree of eviction. It is not possible or it may not be possible either of the spouse to occupy or reside in such acquired premises, even if the case is made out of acquisition of suitable accommodation. In such cases, as a general proposition it is difficult to say that the acquisition of the flat by either of the spouses, itself is a sufficient reason to grant a decree, as contemplated under section 13(1)(1) Bombay Rent Act. In (Hasmukhlal) (Supra) the Gujrat High Court, while referring to the issue and section in question, observed as under;

> "In my view, with regard to the interpretation of Section 13(1)(1) also, the same would be the position. If there is evidence on record that

> tenant and his family members are living together, one of them has acquired suitable residential accommodation and if there is no evidence to the effect that they had not been looking upon themselves as one unit or when the members of the family live together, mess together, then acquisition of suitable residential accommodation by one of them would be considered to be the acquisition of suitable residential accommodation by the tenant. The position might be different in some cases. In the case where the husband and wife are staying separately because of the dispute or for some other reason or where the son is staying in other premises because of the dispute or because after marriage he might consider that he should reside separately and acquires other suitable residential accommodation, then in those cases it can be said that the tenant has not acquired suitable residential accommodation. But while considering this question one cannot miss sight of the normal conditions obtaining in the Indian society where husband and wife with their children reside together as one unit and mess together."

10. The Apex Court in B.R. Mehta V. Atma Devi, 1987 (4)SCC 183, dealt with a case, where admittedly, a wife acquired a flat in pursuance to the relevant service condition. Therefore, it was difficult to say that the husband had a right to occupy the said flat specially when matrimonial relationship was strained already.

11. The Bombay High Court in Nibilal (Supra) has held that it is not only the question of acquisition of

suitable accommodation by the tenant through either of the spouse, it is a further question whether the spouse has an enforceable right to occupy the same. The case was remanded back and did not decide the issue whether the acquisition of alternative premises by the wife would amount to acquisition of suitable residential accommodation by the tenant. This facet need to be decided on the particular fact and circumstances of the case.

12. In the present case, the facts are different. There is a acquisition of the premises by the respondent's wife but petitioner is not willing to occupy the same. Therefore, such tenant cannot claim benefit of the above decisions. In the present case the relationship of the husband and wife is cordial and they are living together. It is difficult to accept the case of the tenant that the acquisition of premises by either of the spouse, is no ground for the landlord to resort to the Bombay Rent Act for eviction. The intention of the Rent Control Legislation cannot be extended to this extend that every spouse have one additional residential premises and raise the defence that the strain in the matrimonial relationship may erupt at any point of time.

Therefore, the acquisition of premises by either of spouse cannot be the ground to evict such a tenant. Therefore, as per the provisions of the Rent Act, the present circumstances are in favour of the landlord and not in favour of the tenant. The petitioners will or wish not to occupy the premises owned by his wife is immaterial and cannot prevail over the claim of the landlord-respondent and the law in question.

13. In the present case, as contended by the learned Counsel appearing for the tenant, that the matrimonial matter between the parties even if settled, cannot be said to be smooth. But admittedly, on the date of filing of the present suit their marriage was in existence and they have been living together in the rented premises. Even the acquisition of the residential premises is in the name of wife, and there is nothing on the record to justify that the respondent is not in a position of occupy the same premises. It is difficult to accept the contention of the respondent that the same is not suitable residence.

14. The learned Counsel appearing for the petitioner rightly pointed out that in the present case the wife of

the petitioner, nowhere expressed any objection or any action to suggest that they cannot stay, live or reside together in the acquired premises. The respondent--tenant failed to lead his own evidence in support of his case in respect of so called matrimonial dispute. The wife in her evidence did not support the case of matrimonial dispute. Therefore, in absence of the positive evidence to suggest that their marriage itself is unsettled and or they are not living together on the date of filing of the suit the case as sought to be contended is not acceptable.

15. The facts in the (Pramila Madhav Damle and others V. Shri Waman R. Koparde) 1992 (2(All. MR. 334, as relied by the appellate Court, were totally distinguishable. In that case, all the family members shifted in the premises owned by the wife, except the tenant. There appears to be matrimonial disputes between the wife and the tenant-husband. The appellate Court therefore, wrong in reversing the finding given by the trial Court on all these counts.

16. The next important aspect is, that even if there is an acquisition of the premises by the tenant, under

the scheme of the Act whether it is suitable residence for the tenant to occupy the same. In absence of any positive evidence on the record, there is no material to justify that the premises in question is not suitable or it was not available for the occupation to the tenant.

17. The basic factor which cannot be overlooked in this case and considering the scheme of the Bombay Rent Act, that the tenant let out the acquired premises and earning profit out of it. They have not kept the premises vacant. It is not the case of additional requirement of accommodation by the tenant. In the present case, and in this background the tenant is not entitled to oppose the case of the landlady. In purshottam (Supra) Bombay High Court has maintained the order of eviction on similar issue of acquisition of residential premises by the wife of the tenant and observed as under;

> "Once it is found that the defendant has prior to the date of the suit acquired vacant possession of alternate suitable residence the subsequent letting of a portion cannot be bring out the defendant from the clutches of Section 13(1)(1)"

18. The Apex court in Ganpatram (Supra) After

considering the material on the record held that there is acquisition of suitable accommodation by the tenant, that it is sufficient ground, if case is made out by the landlord to grant a decree on this ground of acquisition of alternative accommodation by the tenant. In the present case. the landlady, has discharged her burden fully. The tenant in this case, unable to prove the case that the premises acquired in the name of wife is not suitable residence.

19. The Apex Court in Abdul Sattar (Supra) as relied by the respondent has dealt with acquisition of accommodation by the son of the tenant. It was not the case of acquisition of the premises by the wife of the tenant.

20. In Anandi (Supra) as referred in Nibilal (Supra) and as relied, the Apex Court has considered again the case of acquisition of the premises by the son of the mother-tenant. All these cases are distinct on facts itself.

21 . In this background, I see there is no reason to maintain the impugned judgment and order dated 31st

January, 2002. The reasons of the trial Court is correct and need to be restored.

22. For the above reason, writ petition is allowed. The Judgment passed by the Additional District Judge, Kalyan in Civil Appeal No. 15 of 1999, dated 31/1/2002 is quashed and set aside and the judgment and order passed by the Jt. Civil Judge, J.D. Kalyan in R.C.S,. No. 561/1995 , dated 7/12/1998 is restored. The suit is decreed. The petition is allowed in above terms. No order as to cost.

23. At the request of the learned Counsel appearing for the respondent-tenant, six months' time is granted to vacate the premises on filing an usual undertaking within three weeks, failing which the petitioner-landlord is at liberty to execute the decree in accordance with the law. The respondent should not create 3rd party interest during the extended period.

[ANOOP V. MOHTA, J.]